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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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26161 7590 12/26/2002

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EXAMINER

BRITTAIN, JAMES R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3677

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/808,645

Applicant(s)

CLUNE, WILLIAM

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 10, 16-18 and 27-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-9, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 11-13 and 19-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the method for forming a fastener further directed to Group I comprising figures 1B-1F, 3D and 7A in Paper No. 6 is acknowledged.

Claims 1-4, 10, 16-18, and 27-75 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilston et al. (WO 97/31605) in view of Suenaga et al. (EP 826354).

Hilston et al. (Figures 2, 3) teach a method of forming a fastener comprising forming a continuous sheet-form base having a fastener 44a extending therefrom, the base further having non-planar undulations 46 in which the base extends out of its plane to form a peak that extends along a longitudinal direction of the base with opposite major surfaces of the base remaining generally parallel, the undulation 46 being elastically deformable to enable the base to stretch laterally upon application of a lateral

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tensile force to the fastener product. The corrugations 46 may be formed during the molding or stamping of the belt or in other conventional manners (page 6, lines 23-25). The difference is that it isn't stated that there are a multiplicity of fastener elements formed by molding with the sheet-form base. However, Suenaga et al. (figures 20-22; col. 10, lines 1-24) teach that it is desirable to form a molded elastic fastener tape 1 with a multiplicity of fastener elements 4 formed by molding with the sheet-form base and molded integrally with an elastic portion so that there is greater freedom of securement and adjustment of the diaper. Suenaga et al. do this so as to have a simple process while recognizing that cost savings are desirable (col. 1, line 53 - col. 2, line 1). It would have been obvious to modify the method of forming a fastener taught by Hilston et al. so that there are a multiplicity of fastener elements formed by molding with the sheet-form base in view of Suenaga et al. teaching that it is desirable to form a molded elastic fastener tape 1 with a multiplicity of fastener elements 4 formed by molding with the sheet-form base and molded integrally with an elastic portion so that there is greater freedom of securement and adjustment of the diaper. As to claim 14, note that Suenaga et al. suggest the use of polyamide for the fastener section 3 (col. 10, lines 19-24).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hilston et al. (WO 97/31605) in view of Suenaga et al. (EP 826354) as applied to claim 6 above, and further in view of Roe et al. (US 5554145).

Further modification of the method of making the fastener of Hilston et al. such that the undulation is formed by a mating groove and channel of a pair of rollers defining

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a nip in which the base is formed would have been obvious in view of Roe et al. (figures 4, 12, 20-22) which suggests the use of rollers 502, 504 to impart the undulations to the base as being an expedient manner to create undulations.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hilston et al. (WO 97/31605) in view of Suenaga et al. (EP 826354) as applied to claim 5 above, and further in view of Anspach (FR 2750319).

Further modification of the method of making the fastener of Hilston et al. such that there is a flap for joining the fastener assembly to an article would have been obvious in view of Anspach (figures 2, 3) who suggests the use a flap 8 to secure the fastener assembly to an article as being a desirable method of providing a secure fastening.

Allowable Subject Matter

Claims 11-13 and 19-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed October 17, 2002 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one

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of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Suenaga et al. teaches that it is advantageous to mold a continuous sheet-form base having a multiplicity of fastener elements integrally molded with and extending from a fastening section of a surface of the base lying generally in a plane, the base, as molded, having an elastically deformable section to enable the base to stretch laterally upon application of a lateral tensile force to the fastening assembly. Suenaga et al. do this so as to have a simple process while recognizing that cost savings are desirable (col. 1, line 53 - col. 2, line 1). This serves as a suggestion to modify the method of making the fastener of Hilston et al. that has both fastener and base with molded undulations.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on Monday - Friday from 5:30 to 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

A handwritten signature in black ink, appearing to read 'J R Brittain', is positioned above the printed name.

James R. Brittain
Primary Examiner
Art Unit 3677

JRB
December 20, 2002